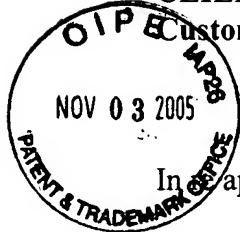


DOCKET NO.: P05810  
CLIENT NO.: NATI15-05810  
Customer No.: 23990

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In application of : RICHARD W. FOOTE  
U.S. Serial No. : 10/781,166  
Filed : February 18, 2004  
For : SYSTEM AND METHOD FOR PROVIDING A UNIFORM OXIDE LAYER OVER A LASER TRIMMED FUSE WITH A DIFFERENTIAL WET ETCH STOP TECHNIQUE  
Group No. : 2813  
Examiner : Tuan H. Nguyen

**MAIL STOP AMENDMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**CERTIFICATE OF MAILING BY FIRST CLASS MAIL**

The undersigned hereby certifies that the following documents:

1. Response to Restriction Requirement; and
2. Postcard receipt

relating to the above application, were deposited as "First Class Mail" with the United States Postal Service, addressed to, MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on **October 31, 2005**.

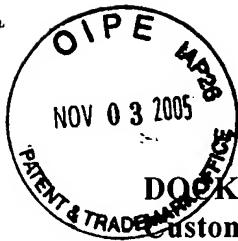
Date: October 31, 2005

  
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Date: Oct. 31, 2005

  
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Sir:

**RESPONSE TO RESTRICTION REQUIREMENT**

This Response to Restriction Requirement is filed in response to a Restriction Requirement dated September 29, 2005. The time for responding to the Restriction Requirement extends to October 29, 2005. Because October 29, 2005 is a Saturday, the time for responding is extended to Monday, October 31, 2005.

In response to the Restriction Requirement dated September 29, 2005, the Applicant respectfully selects the claims of Group II (Claims 1-10 and Claims 21-25) WITH TRAVERSE. The claims of Group I (Claims 11-20) are withdrawn from consideration without prejudice.

The Restriction Requirement characterizes Claims 1–10 and Claims 21-25 (Group II) as drawn to “a method for providing a uniform oxide layer” and Claims 11–20 (Group I) as drawn to “an apparatus.” (Restriction Requirement, Page 2). The Applicant respectfully submits that the Restriction Requirement provides no factual basis for asserting either independence or distinctness of these claims. The Restriction Requirement makes the following statements:

The inventions are distinct, each from the other because of the following reasons: Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case unpatentability of the Group I invention does not necessarily imply unpatentability of the Group II invention, since the device of the Group I invention could be made by processes materially different than that of the Group II invention, for example, they layer could be etched by dry etching rather than wet etching method. (Restriction Requirement, Page 2, Lines 7-15).

The Applicant respectfully traverses the Examiner’s conclusion for the following reasons. A restriction requirement must provide the particular factual basis for asserting that restriction is necessary:

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given. (MPEP § 816, p. 800-56 (8<sup>th</sup> ed. rev. 1 February 2003)).

The Restriction Requirement fails to provide such a factual basis (as opposed to a “mere statement of conclusion”) indicating why the claims recite patentably distinct inventions – that is, a factual basis for asserting that: “the device of the Group I invention could be made by processes

materially different than that of the Group II invention.” The Examiner has assumed (but not shown) that a semiconductor device having a uniform oxide layer over a metal layer (of the type described in the patent application) can be formed “by dry etching” as opposed to “wet etching.” This is not the case, because only a “wet etch” process will etch the phosphorus doped oxide layer at one rate and will etch the boron doped oxide layer at a second different rate. A “dry etch” process will etch the two materials at the same rate. Therefore the “dry etch” process is not “another materially different process” that is capable of creating the apparatus as claimed in Claims 11-20.

Restriction is only proper where the claims are independent or distinct. MPEP § 806. In passing on questions of restriction, the claimed subject matter must be compared in order to determine distinctness and independence. MPEP § 806.01, p. 800-39. The Restriction Requirement concedes that the claims are not independent but are related (“Inventions II and I are related as process of making and product made”).

The Applicant respectfully submits that it is clear that only a “method” of the type claimed in the Group II claims can make the apparatus claimed in the Group I claims. That is, there is not “another materially different process” that can perform the method of the invention as claimed in the Group II claims.

Therefore, the Restriction Requirement accordingly has failed to establish that the apparatus as claimed in the Group I claims (Claims 11-20) could be made by another materially different process than the process as claimed in the Group II claims (Claims 1-10 and Claims 21-25).

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With regard to the assertion that "Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper," the Restriction Requirement fails to provide any factual basis for such conclusion.

With respect to distinctness of Group I claims from the Group II claims, the Restriction Requirement fails to satisfy any of the requirements for restricting the claims of the patent application. Accordingly, the Applicant respectfully requests that the restriction be withdrawn.